**RWANDA’S GACACA COURT SYSTEM**

*When Traditional Justice Became Transitional Justice*

**Introduction**

 In the modern U.S. legal system, we claim to value a defendant’s right to be tried by his or her peers. In reality, however, the system in place safeguards against a defendant’s true peer from taking part in the trial proceedings. Most Western legal systems, the United States’ included, prioritize objectivity in the pursuit of criminal justice. The systems are structured such that personal interactions are less likely to come into play. This is the international norm in criminal justice as well. In international criminal tribunals set up by organizations predominantly governed by Western ideology, this same principle of objectivity takes priority.

 But in one of the largest genocides in recent human history, a different approach governed the majority of criminal proceedings. In the wake of the Rwandan genocide, an ethnic genocide that resulted in approximately one million deaths, a broken country had to determine how to hold the criminals responsible for those deaths accountable. The problem was that as many as 800,000 people were responsible, on some level, for criminal acts pertaining to the genocide. While international organizations such as the UN were present to assist with Rwanda’s rebuilding, the international resources could only support the prosecution for a fraction of these criminals. The lower level criminals simply remained detained in Rwanda’s overcrowded prisons.

 Rwanda’s solution to this was a local court system called *gacaca.* The gacaca system was established to work in conjunction with the UN and the Rwandan national court system.Gacaca, which translates to “in the grass” was a local justice system focused on holding criminal proceedings that would hopefully result in truthful fact-finding, justice, and reconciliation. The modern system of gacaca was an adaptation of a traditional system that had been in place in Rwanda since at least the start of the twentieth century. In its origin, however, gacaca did not deal with crimes anywhere near as serious as genocide.

 This paper will explore the adaptation of gacaca, and its ultimate culmination as a criminal justice system used to prosecute suspects involved in one of the most heinous ethnic genocides in the world’s recent history.[[1]](#footnote-1) Topics covered will include the ways in which a system once used for simple matters of livestock or property evolved to handle the complex crimes of which the Rwandan genocide comprised. Moreover, the paper will present the benefits and pitfalls this system served within the framework of international transitional justice, as well as its perception both on the local and global scales.

**The Progression of the Gacaca Court System**

 Gacaca was an evolving system even before it took its post-genocide form. Although it evolved most radically after the genocide, the changing political dynamics in Rwanda leading up to the genocide influenced the operational aspects of gacaca. Despite its fluid structure throughout its history, it’s clear that some form of the gacaca system had been in place in Rwanda since at least the turn of the twentieth century.

1. *Traditional Gacaca (~1900 – 1919)*

 In its earliest recorded days, the gacaca system did not serve as a permanent judicial institution. It instead was a product of custom and culture, as opposed to written law. Its presence was most prevalent in rural Rwanda. Gacaca proceedings typically took place in response to conflicts that arose within families or between families in a smaller community. The traditional purpose of these court systems was apparently “to sanction the violation of rules that were shared by the community, with the sole objective of reconciliation.”[[2]](#footnote-2) The ideology behind this aim was rooted in the traditional Rwandan prioritization of the value of the familial and community units. These units were considered to be the two most important human units. The general belief was that individuals gained their worth mainly due to their incorporation in a community. The most important community was the family unit, but the wider community was also one of value at this time.

 Traditional cases that would be handled in the gacaca system were far less emotionally charged and complicated than genocide. They often revolved around incidences involving land use, livestock, damage to property, marriage, or inheritance. Although these are not always simple issues, they are a far cry from the heinous crimes this traditional gacaca’s future counterpart would handle.

 Gacaca began as its namesake would indicate, literally in the grass. Proceedings would take place outdoors on a patch of grass in a village or a courtyard. These hearings were traditionally to be overseen by the male heads of households. Women were forbidden from taking part in the proceedings unless they were a party in the conflict.

 The traditional Rwandan value of the community spirit was part of the reason reconciliation became such a priority in gacaca justice. Anything short of reconciliation would result in prolonged disharmony in the community. Such an outcome was an inadequate result.

 To achieve this reconciliation, the early gacaca would require that conflicting parties be brought before community elders. The community elders would essentially serve as judges to hear grievances. The defendants were allowed to respond to any charges brought against them. Thereafter the elders would pass a judgment based on the evidence presented to them by both the parties as well as members of the community who could serve as witnesses.

 The hope in most traditional gacaca was that a defendant would confess to his crime after being prompted by the judge. This confession would consist of a confession, a declaration of remorse, and a request for forgiveness from the injured party. Should this happen, the judge would often order restitution, which would consist of the sharing of beer, wine, and/or food, typically provided by the guilty party. This act of sharing would symbolize reconciliation.

 Even in the cases that didn’t go quite so smoothly, the gacaca judges sentenced with the emphasis on community in mind. All punishments had some sort of aim to be reconciliatory in nature. The idea was that a person who was found guilty would one day be able to regain their social status in the community. For this reason, prison sentences were a rarity. In extreme cases, an individual may have been banished from the community. But even this exile was temporary. A guilty individual would always have the option to return eventually.

1. *Colonial Influence on Gacaca (1919 – 1962)*

 When Belgian colonial powers took over in Rwanda, the gacaca took on a slightly different structure. The Belgian authorities’ control over the national judicial system resulted in the gacaca system taking a more structured form. While in power, the Belgian authorities appointed local administrators to maintain the colonial order. This resulted in the administrators (appointed by the Belgians) being responsible for the appointment of the community elders who would oversee gacaca at the local level. This politicization of the role of community elder led to the periodic assembly of gacaca, as opposed to the assemblies only occurring as required. Further, these assemblies were held by politically appointed judges as opposed to the heads of households. The community nature of gacaca also widened, as all male inhabitants of the community were encouraged to attend the weekly gacaca, even if they were not a party to the conflict.

 In 1943, the Belgian authorities officially recognized gacaca as a legitimate judicial mechanism that complemented the national court system. The Belgian authorities clearly defined the difference between the national system and gacaca. The national system was illustrated as the more sophisticated of the two. However, the speediness and locality of the gacaca presented its own benefits. As such, the citizens had their choice of where to have their disputes handled. There tended to be a divide between the types of people who preferred each court system. By and large, rural populations favored the gacaca whereas as urban persons tended to utilize the national system.

1. *Pre-Genocide Gacaca (1962 – 1990)*

 Once Rwanda gained its independence in 1962, the gacaca evolved yet again. This time, its purely judicial role became an administrative one, in addition to a judicial role. This evolution was a product of defendants’ tendency to appeal cases from a cell to a sector, or to a mayor, or even to judges of the national court system. These administrators therefore began assuming the role of temporary gacaca judges. This development signaled a shift away from the traditional framework of the gacaca judges as heads of households or local community elders. These administrators would call parties to gacaca even when no request had been made at the local community level. As Clark notes, “by this point, gacaca had transformed from a family-based forum of reflection for the renewal of social harmony into a forum in which locally elected judges from the official courts could collect evidence, particularly, in civil matters, and hand down judgments based on the testimony they heard.”

**Post-Genocide Gacaca**

 While gacaca was changing throughout the twentieth century, the form it took after the Rwandan genocide was the most radical and rapid change it had made in its history. The effects of this change not only impacted the Rwandan communities path to healing in the wake of the genocide, but it also had ramifications on the international community's understanding of and framework for transitional justice.

1. *Re-introduction of Gacaca*

In the months immediately following the end of the genocide in Rwanda, 120,000 suspects of genocide-related crimes were arrested and detained. These suspects were primarily Hutus. The country only had the infrastructure to jail 45,000 inmates at the time. As such, this presented a massive logistical challenge for the Rwandan government and the international entities that sought to assist Rwanda in its recovery.

 In addition to the approximately one million deaths, the genocide also caused the debilitation of the foundations of the Rwandan legal system. Many lawyers and judges from Rwanda had either been murdered during the genocide, or had fled the country. Thus, the already struggling political system in Rwanda had been left nearly incompetent.

 As early as 1995, people began suggesting gacaca as a way to remedy the legal shortcomings that existed in Rwanda at the time. In October 1995 at an international conference in Kigali, amnesty and gacaca were two proposed solutions to the overcrowding of the jails. Amnesty was widely rejected, for obvious reasons. After millions of people suffered injury or death in the Rwandan genocide, a blanket grant of amnesty felt like an unsavory solution to survivors or victims’ families. The government of Rwanda rejected the proposal of gacaca because it violated existing Rwandan law in that the gacaca system would not allow for the adequate prosecution of serious crimes, namely murder.

 In August 1996, the Organic Law passed. This law divided the types of crimes committed during the genocide into categories. The categories of crimes were developed based on the severity of the crimes. Further, the law established a plea bargaining system that corresponded with each crime. This plea system involved decreased sentences for confessions. The passage of this law made Rwanda the first country to enact domestic criminal legislation that addressed the issue of genocide.

 In 2001, gacaca was formally introduced as a means of implementing this Organic Law. The purpose of gacaca was to try lower level suspects. The two primary objectives of the government at the time it decided to introduce gacaca were to (1) rapidly decrease the overcrowded prison population and (2) to deal with problems arising from the genocide at the community level. In March 2005, the first convictions and sentencing proceedings occurred. Since then, more suspects than the original 120,000 were identified, nearly 800,000 were ultimately identified in total.

1. *General Structure*

The general structure of the gacaca system in its modern form involved a sort of hierarchy. On the most local level, gacaca would take place in a cell. The next highest gacaca structure is the sector, which encompasses multiple cells. From there, the gacaca also had an appeal mechanism through which defendants could appeal their convictions or sentences. There were two primary components of the proceedings, (1) the panel of locally elected judges who would determine guilt and penalty and (2) the general assembly which included a president and a coordinating committee. Community members were highly encouraged, if not mandated, to attend these proceedings.

1. *Mission of Gacaca*

 The three primary objectives of the gacaca were truth, justice, and reconciliation. In theory, gacaca in its most traditional sense was supposed to a restorative justice system. In the genocidal context, this meant the gacaca had an aim to rebuild and reconcile the entire community. The aim was for the courts to achieve this in a quasi-formal, quasi-negiotated fashion. While there were some predetermined statutes and rules laid out as is typical in a conventional, formal system, there were also aspects of the proceedings that took some more free form at the local level. Victims could express their preferences and ideas of justice, community members could express their empathy for the accused, and so forth.

 In the spirit of reconciliation, engagement was the forefront of the modern gacaca. Engagement occurred on two predominate levels. First, victims could engage with the accused who had harmed them or their family members. Second, engagement on the wider community context would be encouraged. It was the hope of the government that this engagement, despite its unpredictable nature, would ultimately foster the highest likelihood for lasting reconciliation on the community level.

1. *Implementing Gacaca*

 The modern system of gacaca involved the election of judges called *inyangamugayo*, which means wise or respected elder. Community leaders of *nyumbakumi,* or ten-house groups, were responsible for encouraging the household members to vote for gacaca judges and to nominate potential judges as well. Criteria for what made someone eligible to be elected as judge included the person’s community standing, the person’s dedication to the well-being of their neighbors, and their love of truth and justice. Judges needed to be Rwandan nationals who were at least 21 years old with no previous conviction and no prior suspect of genocide related crime. The exception to this latter rule was that a judge could have been a suspect of a property related genocide crime. Other values that were emphasized as crucial in a judge were that the judge needed to be an honest and trustworthy person “free from the spirit of sectarianism.” The judge also needed to be a person who embraced the spirit of speech sharing.[[3]](#footnote-3) The judge was also subject to political restrictions. A judge could not have been an elected official, government or NGO employee. Nor could the judge have been a trained judge or lawyer, member of police, armed services, or clergy. The purpose of these restrictions was to ensure that gacaca would be a process controlled by the citizens and that it would be untainted by any perceived or actual political or legal bias.

 The result of these criteria was that most judges ended up being middle aged, professional, educated members of the community. Women amounted to 35% of the bench at the cell level. In one community, called Sovu, female judges always outnumbered male judges. Generally, judges with a higher education were the ones nominated to the sector level, the level above the cell level.

 The election process was at the time to be considered a relatively successful effort due to the high voter turnout. The election ultimately resulted in 250,000 gacaca judges in cells throughout Rwanda. The judges went under a training that amounted to a total of six days, and began overseeing cases in 2002.

 In 2004, the Gacaca law adapted a bit to address some issues that had arisen since the origin of the modern gacaca. The aim of the new law was to streamline the gacaca process. The law sought to achieve this through decreasing the amount of levels over which gacaca had jurisdiction. Moreover, the law decreased the amount of judges required to run gacaca hearings. Other changes in the law established fix sentences for witness tampering and other interference with investigations. Additionally, victims of sexual crimes were afforded a more private opportunity to tell the judges about their experiences through a proceeding that occurred *in camera.*

 In the implementation of the modern gacaca system, a lot of the traditional system was lost. Most notably, the complexity of the crimes being tried in gacaca far exceeded anything that the courts had seen pre-genocide. Also, the election of judges was a noteworthy change from the traditional system in which community elders took on the role. The proceedings were also no longer voluntary. At least in practice, many communities required or strongly encouraged that their members would come to gacaca. Some communities would even penalize habitual absence. Finally, the nature of the punishments became far more severe. A prison sentence was not longer a rarity to the gacaca. On a positive note, the new gacaca seemed to have a place for women.

Although much changed, a lot also remained the same. The hearings continued to be conducted outdoors in communal spaces. One field observer noted, “the trials take place one day each week in local stadiums, emptied markets, forest clearings, schoolyards, and other areas that can accommodate what is intended to be a community event.” There was still a great deal of emphasis on public participation. The connection between gacaca and social cohesion appeared to remain a top priority for those involved in the modern system. With that said, a great deal of structural and procedural mechanisms became more fine tuned out of necessity in dealing with the complex evolution of gacaca.

1. *Trial Phase Mechanics*

 The mechanics of the trial proceeding were governing by the 1996 Organic Law and the (constantly amending[[4]](#footnote-4)) Gacaca law. The purpose of the gacaca courts was to prosecute crimes that amounted to acts of genocide or crimes against humanity or to prosecute offenses related to the aforementioned crimes. The definitions of these crimes were shaped by international norms established through United Nations resolutions and the Geneva Conventions.

 Ultimately, crimes were divided into three categories. Category One applied to the most serious offenders – those who instigated, planned, or acted as ringleaders throughout the Rwandan genocide. The International Criminal Tribunal for Rwanda and the national court system handled those cases. Categories Two and Three were lesser offenses. Category Two encompassed people “among the killers” as well as those who aided and abetted genocide. Category Three involved genocide crimes related to property.

 Once a cell was determined to have jurisdiction over a crime, it would be responsible for creating four lists. The first was a list of all of those who lived in the cell beore Oct. 1, 1990. The second was a list of all people killed in the cell during a specified time period. The third was a list of all of the the harm inflicted on individuals and property during that time. Finally, the fourth list would be a list of suspects and the category of their crime. A Category Three crime would remain in the jurisdiction of the cell. A Category Two crime would be sent to the jurisdiction of the sector. Both the sector and the cell had a bench of judges, a president of the general assembly, and a coordinating committee. At the cell, every resident over the age of 18 would be asked to attend the assembly.

 Throughout the trial, judges would carry out tasks such as summoning witnesses, issuing search warrants, and imposing punishments. The judges would sit once a week, and the trial would proceed in phases. Phase one involved six weekly meetings at which the cell would compile the four lists mentioned above, and schedule hearings. Phase Two was the seventh meeting, at which the judge would review a dossier of evidence against each accused individual. In Phase Three, the accused would have a chance to respond. In Phase Four, the judges would then weigh the evidence and pass judgment. Throughout the process, lawyers were forbidden from assisting either suspects or witnesses throughout the process. The enforcement of this rule allowed for the system to maintain a non-adversarial dynamic, which was its overall aim. To avoid bias, judges were expected to recuse themselves from situations that involved family members or friends. Since security was also a concern, the Ministry of the Interior was employed to guarantee the security of judges, suspects, and the community at large.

 The President’s role during the trial was to encourage a space for truthful testimony. The hope was that the environment would be such that survivors and victims could openly express their pain and loss. This role was vital in the emotionally charged settings of these gacaca proceedings. Particularly, the President was to encourage women and youth to speak up if they so wished, since these were the demographics most reluctant to speak. The President also sought to encourage a unanimous consensus amongst the judges in their verdicts. However, such a result was not necessary. A simple majority among the judges was enough for a decisive result. Once the verdict was delivered, the accused had the option to appeal to the next level of the gacaca, or to the original gacaca where the conflict was raised.

1. *Penalty Phase Mechanics*

 The punishment system of the gacaca depended on (1) the category of the crime and (2) the completeness of a defendant’s confession. In other words, the most severe sentence would be handed down to a convicted person who had a category one crime and did not confess to it. The sentencing aspect also weighs the timing of a confession. A confession given before trial was given more favorable sentencing than a confession given after trial had already started.

 The age of the convicted person was also relevant. Someone who committed their crime between the ages of 14-18 was given a more lenient sentence. People who committed crimes under the age of 14 were placed in special solidarity camps pursuant to Article 79. The most severe sentence an adult could face was life in prison.

1. *Parallel Forms of Gacaca (post-genocide)*

After the end of the genocide but before a formal implementation of the gacaca system, unofficial strains of the gacaca started to appear throughout Rwanda. Two notable ones are the prison gacaca and the religious gacaca. These unofficial gacaca systems ultimately confused the public perception about both the purpose, methodology, and effectiveness of gacaca.

* 1. Prison Gacaca

 A gacaca not sponsored by the state of Rwanda emerged in a prison in Nyamata district of Kigali Ngali province in 1998. A variation of this unofficial gacaca formed throughout other prisons between 1998 and 2001. In this version of gacaca, detainees at the prisons would divide themselves into groups according to geographical areas and elected panels of urumuri (translates to “the light”) to act as judges over each group. Detainees confessed their crimes to the urumuri and to those at the assemblies. The urumuri recorded the evidence and stored it for official use by the courts when the time came. In other words, the purpose, at least in theory, of this unofficial version of gacaca was to supplement the official one that was pending.

* 1. Gacaca nkiristu or “Christian gacaca”

 Gacaca nkiristu occurred in mostly rural villages and most often pertained to Catholic communities, though not always. Among the villages that are known for having had some sort of Christian gacaca present are Butare, Kibungo, Cyangugu, Kigali Ngali, and Ruhengeri. In these systems, priests or other church officials would play the role of gacaca judges. Parishioners confessed sins to the judges, as well as the congregation. A full confession was followed by an earnest request for forgiveness. The crimes confessed at these proceedings would be both minor and major. Typically, the parishioners would be asking forgiveness from those injured and from the community as a whole. In this system, it was observed that the parishioners felt there was a “divine obligation” for the injured parties and congregation at large to forgive the confessor due to the religious belief that God himself forgave all sinners in his kingdom. Just as God forgave sinners in death, so should the congregation in life.

**Issues with Gacaca**

 The verdict on whether gacaca was a positive effort toward criminal justice or a negative one has yet to come back unanimously. A number of issues have become points of contention. Both international observers and local participants have raised concerns about certain aspects of the gacaca. But for each issues raised by critics, the supporters of gacaca have brought forth counterpoints to come in defense of gacaca. Typically, gacaca supporters recognize that the modern gacaca system is not a perfect one. However, they also believe is a far stronger mechanism than the international institutions such as the ICTR that take even longer and more money to render verdicts.

1. *International concerns*

 Perhaps the most widespread critique of the gacaca system comes from not the locals themselves but from the international observers of gacaca who fear that international norms of due process are violated through systems of gacaca. Most notably, the international observers object to the lack of representation for the accused in these proceedings. Most international criminal bodies that handle crimes of genocide have three advocates: one for the defense, one for the office of the prosecutor, and one for the victims’ representation. The concerns raised primarily in the context of the lack of lawyers is that defendants being tried in their own communities which they are suspected of ravaging during the genocide may not be receiving a fair trial by the process of gacaca.

 There is also concern about the fact that the judges hearing these cases are, for the most part, untrained. At the very least, they are inadequately trained since part of the Gacaca Law mandates that the judges not have legal experience prior to their election. International lawyers have expressed concern that the generally untrained and ill-prepared nature of the judges allows for increased potential for witness intimidation and, on the flip side, unfair trials for defendants. The concern is that the gacaca structure as it stands breeds an environment conducive to “mob justice” and a potential for a return to a violence seen in the past.

 But the supporters of Gacaca have answers for the critics in this regard. In fact, the very purpose of the gacaca trials is to avoid the commonly adversarial legal system in hopes of reaching a reconciliatory end. The lack of lawyers and people with prior legal system is an intentional effort to create comfort in community. Members of the community can discuss the divisive issues of genocide crimes and ethnic divisions outside the confines of a formal, convention, and adversarial legal proceeding. The conventional system, gacaca supporters believe, is not particularly victim friendly. Nor is it one that results in truthful fact-finding or an honest exploration of the depths of the harm the Rwandan genocide left on its community. By having laypeople oversee the gacaca process, the community empowers itself and maximizes their ownership of the process. Such a structure would theoretically increase the likelihood for solutions to be perceived as actually satisfactory to the community, because the community itself heard the evidence and handed down the sentence.

 Moreover, the system places procedural safeguards aimed at preventing bias from tainting a judgment against a defendant. While the safeguards are by no means comprehensive, or fool proof, they do minimize the likelihood that complete “mob justice” will rule in the gacaca system. For example, a judge is required to recuse himself if parties to a charged crime are related to him be a second degree of separation, either through familial ties or friendships. Further, the existence of a panel of nine personally removed judges, and the requirement of a majority to find guilty, serves as a safeguard against the will of one biased judge from becoming the determinant opinion on the issue of a defendant’s liberty. The fact that much of the judges’ deliberation occurs *in camera* away from the public eye, also prevents a mob mentality from swaying the judges one way or another. Finally, since the defendant has a right to an appeal, one (perceived) biased court’s opinion could always be challenged in front of another court. The checks and balances are not perfect, but they do allow for at least some protections for the integrity of gacaca.

1. *Too much truth?*

While the aim of the gacaca is to pursue the full truth in hopes that it will foster reconciliation and healing, one critique of the gacaca is that its informal structure allows for perhaps too much fact finding available to the public. In fact, the atrocities of the genocide were so severe and so widespread, that the uncovering of the full truth behind these atrocities actually may do more harm than good. A case study by Clark illustrates this more vividly:

 In one of the villages, a group of women dragged two large, blue tarps that contained the remains of genocide victims to the shelter at which the gacaca proceedings for two accused persons would take place. The two accused persons were former detainees who had recently been released from prison in exchange for their full confessions. As part of their confession, the suspects had confessed to killing multiple children during the genocide and dumping the children’s bodies in a mass grave on the geographical edge of the cell. The president of the general assembly responsible for the cell ordered the exhumation of their bodies.

 The exhumation itself is not a controversial decision. Exhumation can provide families with a step toward closure. The relatives of the deceased can now properly bury their loved ones with grace and dignity, something that likely mattered to many of the rural Rwandans for spiritual or religious reasons. The exhumation also serves as a physical fact-checker for the veracity of the defendants’ confessions. Had the bodies not been there, for example, it would indicate that their confessions were partially, if not entirely, false. Such an outcome would affect their sentencing.

 But in this particular gacaca, where the president had the remains exhumed, he also chose to display the remains at the gacaca. The remains consisted of a pile of rotten clothing in one tarp and a heap of child bones in the other. Upon this sight, much of the general assembly observing the gacaca became emotional. In particular, the observer noted the women and children present began weeping. The men present become emotional as well, but their emotion manifests in anger. They are angry that such traumatizing evidence was brought forth in front of so many people.

 However, because truth is a pillar of the gacaca, the president has his own rationale for doing this. First, action like this serves to clearly illustrate the gravity of the accused parties’ crimes. The president in the example case intended to publicly shame the accused for the monstrosity of their acts. But on the flip side, it also corroborates the veracity of the accused persons’ confessions for the public. In a sense, the display of the bones is the ultimate form of transparency with the public about the fact-finding that occurs throughout the gacaca phases.

 The question is whether this transparency serves to do more harm than good at serving the gacaca’s overall mission. In an effort for reconciliation, is there such thing as too much truth and illumination before reconciliation becomes impossible? Can the families and friends of the deceased children really ever reconcile with those who confess to killing the children after seeing their young loved ones’ rotten remains? This dilemma illustrates how the pervasive display of truth can serve as a double edged sword in the gacaca process, and how different individuals’ preferences to reveal the full truth while others struggle to swallow the full truth can lead to difficulty in achieving a uniform sense of healing in the communities implementing gacaca.

1. *Not enough truth?*

 Truth presents an issue for gacaca not only in its abundance but also in is absence or partiality. One of the largest issues that plagued the gacaca courts was the widespread tactic of witness intimidation. Individuals slated to testify in gacaca proceedings were frequently killed and if they were not killed it’s likely the witnesses perceived either direct or implicit threats before providing their testimony. Though the exact numbers of witness deaths or intimidations is not known, what is clear is that the problem was widespread enough that the gacaca had to implement a sentence specifically to address the issue of witness intimidation and the impediment of investigation or justice. A widespread issue of fear amongst survivors and witnesses surely affected the validity of the testimony being elicited at the gacaca. Knowledge of this begs the question as to whether many accused persons ended up being convicted of crimes less severe than the ones they actually committed. If this perception exists in the communities in which convicted persons and survivors must co-exist after a sentence is handed down and served, can the survivors truly reconcile with the guilty parties after their potentially lenient sentence ended and the guilty are back living in the community? For that matter, can the survivors forgive their own community that handed down that sentence? These issues present themselves when there is a lack of transparency, as opposed to an overdose of it, as illustrated in the above section.

1. *The local framework applied in a national and global context*

The other major critique of the gacaca system is that while the Rwandan government markets it as a local legal system, it really does not operate locally in the way gacaca did in its early twentieth century days. First, this is obvious in the sense that the state of Rwanda enumerated a legal framework for gacaca in a statewide statute. Thus, there is a national standard by which gacaca is supposed to be practiced. It’s true that the implementation of this standard can vary from village to village, but the reality is that the state government is often present to make sure that no village deviates from the law’s structure too much. If the government senses such a divergence, in fact, the government will intervene. The government also provides secret dossiers to the General Assembly in certain cases against the accused. While this is not necessarily a violation of the Gacaca Laws per se, it does take away a lot of the autonomy that the communities are purported to have in the investigative phases of gacaca. The state of Rwanda seeks to play an active role in this gacaca, however, because they believe that the gacaca can be the key to fostering a sense of community statewide and healing the divides that both culminated in the Rwandan genocide and existed as a result of that genocide. A united country is in the nation’s interest going forward.

 Beyond the state government’s influence on gacaca, the system has also been influenced by the western influence of organizations such as the UN and other international nongovernmental organizations that have dedicated time and resources to assisting Rwanda in its recovery. This western presence confused the meaning of gacaca in a way that local Rwandans had a difficult time understanding. Because so many Rwandans equated the word gacaca with its traditional precursor, they were confused when this new gacaca began taking the form it did. This confusion turned to fear when victims inferred that reconciliation principles associated with gacaca would mean that perpetrators of genocide would receive relatively lenient sentences. There was even a fear that some would receive amnesty as a result of gacaca.

 But the western law harshened the nature of gacaca by imposing actual prison sentences for crimes of genocide. It also clearly defined crimes like genocide and crimes against humanity, offenses that Rwanda had not legally dealt with at the domestic level prior to the 1990s. In practice, the Gacaca Laws represented synthesis of the Western laws of the countries offering their assistance, merged wit the historical and traditional Rwandan practices that were once attributable to gacaca. But this changed the meaning, and perhaps effectiveness of modern gacaca.

 On one hand, the communal dialogue and deliberation extracted from traditional gacaca remained present in the modern system. Such a dialogue presumably supported the mission of reconciliation. However, the addition of western legal structures seemed directly at odds with the nature and purpose of the gacaca. For example, the formal structure of plea-bargaining was introduced into the sentencing structure of the Gacaca laws. While this incentivized some detainees to come clean and tell the full truth about what they had done, it was not always for the right reasons. In western law, the reasons for which we obtain a confession does not matter. The confession itself is the evidence western legal systems seek to obtain. However in gacaca, the spirit behind the confession is an important aspect when it comes to reconciliation. Many survivors got the feeling that detainees confessed and apologized because it what was legally required of them before they could minimize their sentence, not because they actually felt remorse for their involvement in the genocide. A significant amount of detainees have also testified to this effect. Outcomes like this demonstrate the ways in which formal western legal structures can be antagonistic to the overall reconciliatory aim of gacaca, even when the formal structure may in fact support the truth-seeking aspect of gacaca.

**Conclusion**

 Supporters and critics alike have lauded the modern gacaca movement as an ambitious and courageous effort in transitional justice in the wake of a truly horrific genocide. The issue of overwhelming overcrowding in state prisons led to a truly unique approach to the adjudication genocide. It was an attempt unlike any seen by the international community in the past. While the practical application of gacaca received some criticism, the overall theory behind it, the communal assessment of guilt with an ain toward healing and forgiveness, resonated with much of the international legal community.

 As such, discussions are underway in Northern Uganda, Burundi, the Democratic Republic of Congo, and other post-conflict societies that have faced widespread conflict, yet also have strong community presence within the villages that make up the states. These states also appear to be strong candidates for adapting other local community-based institutions as instruments of transitional justice. Whether a supporter or critic of the modern gacaca system, its successes and failures are sure to assist future post-conflict societies in creating a structure to seek justice in the wake of tragedy. For that reason, its importance cannot be overstated.

1. #  Three case studies provided the basis for the information upon which this paper relies: (1) Clark, Phil., *Hybridity, Holism and “Traditional” Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda,* (2007), (2) Rettig, Max, *Gacaca: Truth, Justice, and Reconciliation in Postconflict Rwanda?,* (2008) African Studies Review, Volume 51, Number 3, December 2008, pp. 25-50, (3) Sharp, Jeb: Part II: Rwanda's gacaca courts, Feb. 14, 2007, https://www.pri.org/stories/2007-02-14/part-ii-rwandas-gacaca-courts

 [↑](#footnote-ref-1)
2. According to Abbé Smaragde Mbonyintege. (CLARK) [↑](#footnote-ref-2)
3. Art. 14 states that judges should be capable of encouraging the community to participate in gacaca hearings and of facilitating peaceful, productive discussions in the General Assembly. [↑](#footnote-ref-3)
4. There were several versions of the gacaca law between 2001 and 2008 [↑](#footnote-ref-4)